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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/677,737

10/02/2000

Curtis Cole

JBP525

3415

7590

06/16/2006

Philip S Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003

EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/677,737	COLE ET AL.	
	Examiner	Art Unit	
	Gina C. Yu	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/5/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 5, 2006 has been entered.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on May 5, 2006 was filed before the mailing date of the first Office action filed after filing of request for continued examination according to 37 C.F.R. § 1.114. The submission is in compliance with the provisions of 37 CFR § 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Tokuyama et al. (EP 1090630 A1) ("Tokuyama ").

Tokuyama discloses method of treating atopic dermatitis such as erythema by topically applying a composition comprising ethanolamine in cosmetically acceptable carriers. See abstract; par. 0234-0259; instant claim 1. See par. 0006 which meets the

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formula and the constituents of instant claim 1. Par. 0011 discloses 2-ethylaminoethanol, diethanolamine, diethanolamine, and 2-dimethylaminoethanol, and specific formulations comprising 1 % by weight of the ethanolamines are disclosed in Examples 13-16, among others. See par. 120-124; instant claims 1-3. The compositions also comprise paraben and ethanol, potentially skin-irritating materials. See instant claim 6. See par. 2. See Berndt (US 5626856), col. 1, lines 55 – 64. The claimed method of “ameliorating the irritating effects of a skin irritating composition” is inherently practiced by making the Tokuyama composition by adding paraben with dimethylethanolamine as disclosed by the reference.

The prior art method of treating atopic dermatitis such as erythema meets instant claim of method of treating the inflamed skin due to allergic skin reactions, as erythema can be caused by allergic skin reaction. See applicants' spec. p. 7, lines 18 – 28.

Claims 1-3, 5, 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Perricone (US 6365623 B1) ('623).

'623 patent teaches method of treating acne in inflammation phase by applying a composition comprising lipoic acid and most preferably adjunct ingredients such as 0.5 – 5 % by weight of methyl or ethyl-aminoalcohols or 0.05-% by weight of tyrosine. See col. 1, line 21 – col. 2, line 6; col. 5, 30-53; col. 8, lines 41-61; col. 9, lines 16-22; instant claims 1 and 5. The patent specifically states, “one particularly efficacious embodiment of the invention contains lipoic acid, glycolic or lactic acid, and dimethylaminoalcohol; and another further contains tyrosine.” See col. 9, lines 21-23. The reference teaches that Examiner asserts that the claimed method is anticipated by the specific teaching

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here. As for claim 6, the reference teaches to incorporate benzyl peroxide, retinoids, alpha-hydroxy acids such as glycolic acids, which potentially irritate the skin. See Ren (US 6183747 B1), col. 2, lines 2 –18; Ptchelintsev et al. (US 6333356 B1), col. 1, lines 40-49.

The prior art method of reducing erythema meets instant claim of method of treating the inflamed skin due to allergic skin reactions, as erythema can be caused by allergic skin reaction. See Perricone, abstract; applicant's spec. p. 7, lines 18 – 28.

Conclusion

No claims are allowed.

This is a continued examination of under 37 CFR 1.114. All claims are drawn to the same invention claimed during the earlier examination and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered during the earlier examination. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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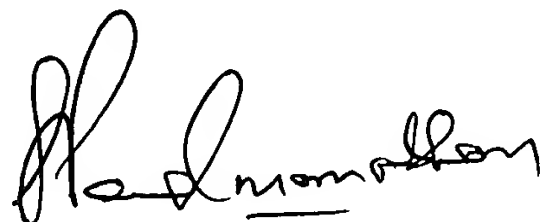
the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 7:00AM until 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina Yu
Patent Examiner



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER